

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'C' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Shri S.S.Viswanethra Ravi, JM]

ITA No.816/Kol/2015
Assessment Year : 2011-12D.C.I.T., Circle-10(1)
Kolkata

-versus-

M/s Tuscon Engineers (P)Ltd.
Kolkata
(PAN: AA ACT 9758 M)
(Respondent)

(Appellant)

For the Appellant: Shri Saurabh Kumar, Addl.CIT, Sr.DR

For the Respondent: Shri S.K.Dasgupta, AR

Date of Hearing :23.04.2018.

Date of Pronouncement : 27.06.2018.

ORDER**Per S.S.Viswanethra Ravi, JM**

This is an appeal by the Revenue against the order dated 31.03.2015 passed by C.I.T-(A)-4, Kolkata for A.Y.2011-12.

2. The only issue to be decided is as to whether the CIT(A) is justified in deleting the addition made on account of sundry creditors under the provision of section 68 of Income Tax Act, 1961 (Act).

3. The brief facts of the case are that the assessee is a company and is engaged in the business of civil contracts. During the course of assessment proceeding the AO found that the assessee claimed expenses relating to 19 construction sites to an extent of Rs.2,55,15,443/-. For non furnishing of explanation the AO added the said amount to the total income of the assessee by treating the same as unexplained credit in terms of section 68 of the Act. The CIT(A) held that the AO is wrong in adding the said addition u/s 68 of the Act as the said amount is not a cash credit whereas the assessee has claimed the same as expenditure. According to CIT(A) the assessee produced all the details before the CIT(A) and the same were sent to the AO seeking his remarks. The CIT(A) considering the remand report and found satisfied and allowed the said

expenditure u/s 37 of the Act The relevant portion of which is reproduced herein below :-

“5.3. Discussion and Appellate Decision

The appellant is in the business of civil construction and engineering business; mainly construction of cement factories. Its client's project sites are all over the country, as also overseas. During the relevant financial year, there were 19 construction sites. For, consolidation of the accounts of the different sites, abbreviations are used for the purpose of quick identification of the site. Thus the abbreviations as JUD for Jude Cement Ltd, Jaintia Hills, Meghalaya/ KUL for Sat yam Satyanarayan, JV, Kullu , GRV for Green Valley Industries Ltd, Jaintia Hills, Meghalaya/ MAI for Maihar Cement, Satna, MP /CEN for Century Cement Ltd, Baikunth, Chattisgarh/ TPSL for Time Steel Pvt Ltd, Rourkela, Orissa/ GOA for KMC Construction Ltd, Goa / ESPL for Eastern Steel & Power Ltd, Jharsuguda, Orissa/ PIL for Prakash Industries Ltd, Champ a, etc, etc; as also for overseas sites NAI for Athi River & Mining, Nairobi/ TAN for Mewani Stone Lime Ltd, Tanzania etc.,

The List of the sundry creditors for expenses runs into 13 pages giving alongside the details/summary of: the Name of the Parties/Address/Name of the Client's sites/Opening Credit Balance/Opening Debit Balance/Bills raised for job work during 2010-11/ Other Bills raised for Misc. works/Payment made during 2010-11/ Closing Credit Balance/Closing Debit Balance/TDS.

5.3.1 On the issue, at the outset the Assessing Officer has erred in invoking an inapplicable section - section 68. Section 68 is concerning Cash Credits; whereas the facts of the issue are concerning Expenditure. Thus, section 68 is simply out of context here.

The likely reason for the mix-up is because of the common word 'Credit'. The distinction is that Cash Credit concerns 'Cash' - being category of Real Asset accounts and therefore the accounting principle is that in the books of accounts when Cash comes in, it is Credited. Whereas 'Sundry Creditors for Expense' relate to Expenditure being category of Expense accounts, and so though debited in the Profit & Loss A/c, the outstanding unpaid balance appears in the Balance Sheet as Credit.

5.3.2 Be as it may, the functions and power of CIT(A) being coterminous with that of the Assessing Officer, even if considered from the perspective of the applicable sections 28 and 37, I also find that the proper facts have not been completely appreciated. These are hereunder:

5.3.2.1 What has been added back is only the outstanding balances. *This means that the expenditures already paid [and to the same parties] have been accepted. I have gone through the detailed account extracts submitted in the paper books. The detailed columns are: Name of the Parties/Address/Name of the Client's sites/Opening Credit Balance/Opening Debit Balance/Bills raised for job work during 2010-11 / Other Bills raised for Misc. works/Payment made during 2010- 11/ Closing Credit Balance/Closing Debit Balance/TDS. What is appearing in the Balance Sheet is only the Closing Credit*

Balance. Thus, when payments already made are not doubted, then it is contradictory to doubt the outstanding balances.

5.3.2.2 The Assessing Officer's crux reason is that of 'insufficient address'. But the realities that the appellant is carrying work of constructing of factories/ cement factories - and such factories obviously are located in far-off and remote areas. The persons carrying out the variety of miscellaneous works obviously will not be residing at the project site. They come and go as and when the work requires. or they depute their persons. As far as the appellant is concerned for income tax matters is that if TDS is applicable, then the appellant is to deduct TDS, which implies that only PAN is required. The appellant has deducted TDS in many cases. The appellant is not in the business there to verify the addresses of the persons.

5.3.2.3 In the outright entire addition of the sundry creditors for expense, have also been outright added even the regular head office liabilities like Salary, etc., accrued in the month of March and paid in April.

*5.3.2.4 Other flaws when looking at the Balance Sheet are:
'Sundry Creditors' comprise of:*

Schedule- "E"

CURRENT LIABILITIES AND PROVISIONS:

CURRENT LIABILITIES:

Sundry Creditors-

<i>For Capital Goods</i>	<i>1094389.19</i>	<i>1825365.54</i>
<i>For Other Goods</i>	<i>8329676.67</i>	<i>8802309.12</i>
<i>For Expenses</i>	<i>24996921.81</i>	<i>25515443.99</i>
	<hr/>	<hr/>
<i>Total(i)</i>	<i>34420987.67</i>	<i>361431185.65</i>
	<hr/>	<hr/>

(i)The AO however has cherry-picked only the Creditors for Expenses.

(ii)The entire creditors for expense had been added back - which just cannot be so. This is extreme view taken.

(iii)Sundry creditors for expense is not a new phenomenon. It has always been there every year.

5.3.2.5 The Id. AR in the submissions has also stated hereunder:

That the Ld. Assessing Officer stated in his order, he issued notice u/s 142(1) on 19.08.2013, which is not a fact. We are enclosing herewith the copy of the notice as issued by the Ld. Assessing Officer. The same will prove that it was never issued or sent in the month of October. But it was issued in the month of December, which was received by the appellant firm on 16.12.2013 and in the said letter, the Ld. Assessing Officer asked to submit as merry as 92 questions and the date was fixed on 17.12.2013 i.e. the appellant was supposed to reply so many questions within one day Instead of 4 months. However, in reply to question regarding outstanding liabilities, names & addresses etc., the assessee replied giving the details of the name to whom

the amount was supposed to be paid and Indicating the name of the camp site in short words such as JUD means Jud Cements Ltd. However, from the copy of the assessment order and notice, it will be proved that the Ld. Assessing Officer asked the assessee to comply with the 92 questions within one day and subsequently he allowed some time and completed the assessment within 10th March, 2014 i.e. the appellant had to reply more than 90 questions In detail and the list of sundry creditors was also filed. The Assessing Officer never raise any objection to that but completed the assessment disallowing the entire sundry creditors and liabilities for expenses amounting to Rs.2,55,15,443.99 and computed the assessment within 83 days i.e. 56 working days.

Be that it may, in the appeal proceedings the appellant has been allowed to present the entire details and submissions, and the AO has been accorded opportunity and remand report submitted.

5.3.2.6 As regards the remand report, it again is only on the single limited issue of 'postal address' only, without commenting wholistically upon the explanations and arguments and gamut of the issue.

5.3.2.7 The Ld. AR has also made an argument from the profitability angle. Though this may not be possible to directly correlate with the issue, yet it is pertinent material to show that there has not been dent on the profits, rather the profits have been healthier.

5.3.2.8 The Ld. AR has also raised argument that the books of accounts were not rejected u/s 145(3); therefore that the addition hath not been as per sequence of procedure required by law. This is also a notable point; however as I have already given relief in Paras above on basic prominent facts and perspectives, I do not feel it necessary to dwell on this; but it is a point.

5.3.3 For the above discussions and reasons, thus, the impugned addition made at Rs. 2,55,15,444/- is hereby Deleted.”

4. In view of the above we find no infirmity in the order of CIT(A). Accordingly it is justified. This ground raised by the revenue is dismissed.

5. In the result the appeal of the revenue is dismissed.

Order pronounced in the open Court on 27.06.2018.

Sd/-

Sd/-

[J.Sudhakar Reddy]
Accountant Member

[S.S.Viswanethra Ravi]
Judicial Member

Dated : 27.06.2018.

[RG Sr.PS]

ITA No.816/Kol/2015 M/s Tuscon Engineers Pvt. Ltd. A.Y.2011-12

Copy of the order forwarded to:

- 1.M/s Tuscon Engineers Pvt. Ltd., 124 B, S.P.Mukherjee Road, Kolkata-26.
2. D.C.I.T., Circle-10(1), Kolkata.
3. C.I.T.(A)-4 Kolkata 4. C.I.T.-4, Kolkata..
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches